

MEMORANDUM OF AGREEMENT
NO. 08-MU-35-0005
BETWEEN THE
UNITED STATES DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION
AND
CITY OF TEMECULA
AND
CITY OF MURRIETA
AND
COUNTY OF RIVERSIDE
AND
COUNTY OF SAN DIEGO
AND
CALIFORNIA DEPARTMENT OF TRANSPORTATION
AND
UNITED STATES DEPARTMENT OF THE NAVY, NAVAL WEAPONS STATION-
FALLBROOK
AND
UNITED STATES DEPARTMENT OF THE NAVY, MARINE CORPS BASE CAMP
PENDLETON

This Memorandum of Agreement (MOA) for the Santa Margarita Lagoon Investigative Order Project (Lagoon Study) is made and entered into this 28th day of May, 2008, by and among the City of Temecula, City of Murrieta, County of Riverside, County of San Diego, United States Department of the Navy – Naval Weapons Station-Fallbrook, United States Department of the Navy – Marine Corps Base Camp Pendleton, and the California Department of Transportation, hereinafter referred to as "**Partners**", and The United States Department of the Interior, Bureau of Reclamation, hereinafter referred to as "**Reclamation**", all of which are at times collectively referred to as "**Parties**." This agreement is made pursuant to: the Act of Congress approved June 17, 1902, (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as Reclamation Law; the Act of March 4, 1921, Public Law 66 - 389, The Sundry Civil Expenses Appropriations Act for 1922 (Popularly referred to as the Contributed Funds Act), (41 Stat. 1404); and the "Act of June 30, 1932 ch. 314, sect. 601 (Economy Act)(47 Stat. 417). – Interdepartmental Transfers, Section 686; and the Fiscal Year 2006 Energy and Water Development Appropriations Act, Public Law 109-103 ; November 19, 2005.

RECITALS

WHEREAS, Santa Margarita Lagoon has been added to the State's list of impaired water bodies (303d list) for at least one of the following constituents: sediments, total dissolved solids, enteric bacteria, and/or nutrients; and

WHEREAS, As a consequence of this listing, total maximum daily loads (TMDLs) must be developed for the critical constituents in each of the lagoons (Project); and

WHEREAS, the **Parties** received an Investigative Order, R9-2006-0076 (Order), from the San Diego Regional Water Quality Control Board (SDRWCB) regarding the Santa Margarita River Lagoon and Estuary (Lagoon); and

WHEREAS, to comply, in part, with the Order, the **Parties** must develop and execute a scientifically valid water quality study of the Lagoon (**Lagoon Study**) within prescribed timelines; and

WHEREAS, the **Partners** desire to share in the costs associated with the development and execution of the **Lagoon Study** as required by the Order; and

WHEREAS, **Reclamation** has the authority to conduct the **Lagoon Study** pursuant to: the Act of Congress approved June 17, 1902, (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as Reclamation Law; the Act of March 4, 1921, Public Law 66 - 389, The Sundry Civil Expenses Appropriations Act for 1922 (Popularly referred to as the Contributed Funds Act), (41 Stat.1404); and the "Act of June 30, 1932 ch. 314, sect. 601 (Economy Act)(47 Stat. 417). – Interdepartmental Transfers, Section 686; and the Fiscal Year 2006 Energy and Water Development Appropriations Act, Public Law 109-103 ; November 19, 2005; and

WHEREAS, **Reclamation** has been requested by the **Partners** to coordinate and lead the effort identified in the Order; and

WHEREAS, **Reclamation**, under the Contributed Funds Act, has the authority to receive funds from non-Federal **Partners** to fund their portion of the **Lagoon Study**; and

WHEREAS, pursuant to the Economy Act, 31 U.S.C. 1535, **Reclamation**, has the authority to receive funds from the Department of the Navy, to fund discrete and segregable portions of the **Lagoon Study** under pre-existing contract(s) that **Reclamation** holds for its own federal purposes/activities in the Santa Margarita River Basin; and such pre-existing contract(s) are for procurement of same or similar services as those that will be provided under an Economy Act Order, and

WHEREAS, the Federal agencies identified in this MOA have determined that: the use of an Economy Act Order is in the best interest of the Government; services necessary for the Federal agencies to comply with the Investigative Order cannot be obtained as conveniently or economically by contracting directly with a private source; Department of the Navy unique terms and conditions, if applicable, will be included in the contract award; and funding is available and appropriate for the acquisition of services to undertake and complete the **Lagoon Study**, and

WHEREAS, **Reclamation** has funds available under the Southern California Investigations Program to assist in initiating and coordinating the **Lagoon Study**; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained and which are incorporated into this MOA, the **Parties** agree as follows:

ARTICLE I PARTIES' GENERAL RESPONSIBILITIES

- 1.0 **Reclamation** shall perform the following functions:
 - 1.1.0 Serve as the entity responsible for overall contract management and administration of consultant contracts for all work on the **Lagoon Study**.
 - 1.1.1 Retain a consultant(s), satisfactory to the **Partners**, to perform the **Lagoon Study**.
 - 1.1.2 Prepare quarterly progress reports of work performed by consultants in accordance with the project schedule described in Article 5.
 - 1.1.3 Schedule Executive Management Team Meetings at least quarterly and provide summary notes of Executive Management Team meetings within two weeks of the meeting date.
 - 1.1.4 Submit quarterly data reports to the SDRWQCB on behalf of the **Partners**.
 - 1.1.5 Upon execution of this MOA, **Reclamation** shall invoice each **Party** based on the shared costs identified in Article 4.0.

ARTICLE II EXECUTIVE MANAGEMENT TEAM RESPONSIBILITIES

- 2.0 The **Partners** shall each designate a representative or designee to serve as a member of the Executive Management Team.
- 2.1 The Executive Management Team (EMT) shall perform the following: Participate in the oversight of the **Lagoon Study**, attend meetings and collaborate on developing strategies.

ARTICLE III TERM OF AGREEMENT

- 3.0 This MOA shall commence on the date of the last signature of the **Parties** and shall terminate on April 1, 2009, unless modified, in writing, by all the **Parties**.

ARTICLE IV
FUNDING

- 4.0 The cost of the **Lagoon Study** shall not exceed \$372,929 and will be shared as follows by the **Partners** named in the Order:

Cost Share Partner	FY2008	FY2009	TOTAL
Riverside County	\$29,397	\$14,228	\$43,625
Temecula	\$40,246	\$19,076	\$59,322
Murrieta	\$47,684	\$22,399	\$70,083
Caltrans	\$10,783	\$6,160	\$16,943
San Diego County	\$77,927	\$54,847	\$132,774
Camp Pendleton	\$21,892	\$14,615	\$36,507
Fallbrook Naval Station	\$8,656	\$5,019	\$13,675
Total	\$236,585	\$136,343	\$372,928

- 4.1 Each **Partner** shall provide their share of the **Lagoon Study** costs in accordance with Article 4 and subject to availability of funds as described in Article 4.2.
- 4.2 Each **Party's** obligation to make any payment under this MOA beyond the current fiscal year is contingent upon the availability of funding from which payment can be made. No legal liability on the part of any **Party** shall arise for payment beyond each **Party's** respective fiscal year unless funds are designated by that **Party** and are made available for payment of this MOA.
- 4.3 The **Partners** will reimburse **Reclamation** for overhead expenses associated with overall administration of consultant contracts, and submittal of required work products associated with the Order in the amount of \$15,000. This administration cost has been built into the costs shown in Article 4.0.
- 4.4 In the event that any funds advanced to **Reclamation** by the **Partners** are not required to complete the work under this MOA, such excess funds shall be returned by **Reclamation** to the **Partners** without interest, within 60 days of completion of the scope of work. In the event the authorized representatives agree on additional work, such excess funds may be retained by **Reclamation**, consistent with the terms of this MOA.
- 4.5 **ENCUMBANCE:** By reason of constraints in California law and the California Constitution, Caltrans encumbers \$16,943.00 as its portion of the shared cost and no further funding assumed under this Agreement unless this Article is amended by Caltrans to reflect a new enhanced funding limit.

ARTICLE V
COORDINATION, PROGRESS REPORTS, AND AUDITS

- 5.0 **Reclamation** shall submit to the EMT, a report of actual expenditures on Project activities at each "milestone" as determined by the EMT.
- 5.1 **Reclamation** shall maintain a separate account showing expended and available resources for all the work performed under this MOA, with costs identifiable by Project activity. These accounts and related records shall be available for inspection, audit, and reproduction by the **Partners**, without charge, during normal business hours.
- 5.2 Work performed under this MOA is also subject to examination and audit by the Federal Inspector General and each **Partner** for a period of three years after final payment of funds under this MOA.
- 5.3 As dictated by Federal Fiscal Law, **Reclamation** shall maintain separate accounts for all funds transferred by Naval Weapons Station-Fallbrook and Marine Corps Base Camp Pendleton.

ARTICLE VI
AMENDMENTS

- 6.0 The **Parties** acknowledge that the schedule of activities and costs of conducting the Project are estimates based on an anticipated work product and that changes may occur due to changes in the physical dimensions of the monitoring order, the technical effort needed to complete the Project, the variability of the natural conditions, and the cost of the **Lagoon Study** tasks. Therefore, the **Parties** agree that if a change in the activities or costs described in this MOA, including Appendices, is necessary and feasible, the MOA may be modified, in writing, signed by all **Parties**.
- 6.1 In the event that an additional agency desires to participate in the Project, this MOA may be modified. The added **Partner** shall agree to the terms set forth in this MOA and shall have all rights as are conferred on the original **Parties**. **Reclamation** and the **Partner(s)** shall agree upon the terms of new membership including financial contributions unanimously.

ARTICLE VII
LIABILITY FOR INDEMNIFICATION

- 7.0 **Reclamation** shall perform its obligations under this MOA in the capacity of a Federal agency. Camp Pendleton and NWS Fallbrook shall perform their obligations under this MOA in their capacities as Federal agencies in accordance with federal law. The non-federal **Partners** shall perform their obligations under

this Agreement in their respective capacities as public entities of the State of California. No **Party** is a co-venturer, agent, employee, or representative of any other **Party**.

- 7.1 No **Party** assumes liability for claims or actions arising out of the performance of any work or actions or omissions, by any other **Party**, its agents, officers and employees.
- 7.2 Liability of the United States resulting from the negligence of its employees shall be governed by the Federal Tort Claims Act (28 U.S.C. 2671, et seq.). The **Parties** recognize that the Federal Tort Claims Act operates to provide liability coverage for the United States Government and its employees in lieu of ordinary insurance coverage.
- 7.3 Each **Party** agrees to defend itself from any claim, action or proceeding arising out of the acts or omissions of itself and retain its own legal counsel, and bear its own defense costs.

ARTICLE VIII FEDERAL AGENCY CONSIDERATIONS AND LIMITATIONS

- 8.0 The expenditure or advance of any money or the performance of any obligation created herein by any federal agency under this MOA shall be contingent upon timely appropriation or allotment of funds by Congress for an appropriate purpose. Interruption of federal funds as the result of Congressional action/inaction shall relieve the Federal agency **Partners** from any obligation under this Agreement until such time as funds become available.
- 8.1 Camp Pendleton and NWS Fallbrook are federal enclaves under the exclusive jurisdiction and control of the United States Department of the Navy (DoN). Both installations, as agencies of the federal government, may be subject to limitations in their abilities to comply with every provision stated herein in the same manner as the non-federal **Partners**. Both installations will endeavor, in good faith, to satisfy all pertinent federal obligations created herein.

ARTICLE IX TERMINATION

- 9.0 Any **Party** may terminate this MOA by giving written notice to the other **Parties** no less than 30 days prior to the effective date of termination. Termination of this Agreement does not release any **Party** for obligations of the Investigative Order, nor does it release it from the financial obligations of this MOA.

ARTICLE X
MISCELLANEOUS PROVISIONS

- 10.0 This MOA may be amended only by consent of all the **Parties**. No amendment shall be effective unless it is in writing and signed by the duly authorized representatives of the **Parties**.
- 10.1 This MOA shall be governed and construed in accordance with the laws of the State of California and Federal law. If any provision or provisions shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. In addition, each **Party** agrees to comply with all federal, state and local laws and ordinances applicable to the work to be performed under the terms of this MOA.
- 10.2 No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the **Parties** to have waived or consented. Any consent by any **Party** to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- 10.3 The **Parties** agree to mediate any dispute prior to filing suit or prosecuting suit against the other **Parties**. In the event suit is brought upon this MOA to enforce its terms, each **Party** shall be responsible for its own attorneys' fees and costs.
- 10.4 This Agreement constitutes the entire MOA between the **Parties** with respect to the subject matter; all prior agreements, representations, statements, negotiations, and undertakings are superseded hereby.
- 10.5 All information and data obtained or developed by **Reclamation**, in connection with development of the **Lagoon Study** activities (exclusive of intra-governmental communications) shall be available upon request, except where prohibited by law, to the **Partners** without further charge. However, use of said reports, data, and information shall appropriately reference **Reclamation** and the **Partners** as the source.
- 10.6 Data compiled, and the results of studies performed, under this MOA will become public domain upon the completion of the investigation and project report, or upon completion of a concluding report under the provisions of Article 11 herein. All deliverables shall include the **Reclamation's** Visual Identity logo information.
- 10.7 No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this MOA, or to any benefits that may arise wherefrom; but this provision shall not be construed to extend to the MOA if made with a corporation for its general benefit.

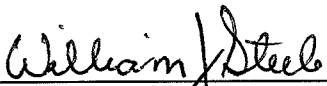
10.8 This MOA may be executed in original counterparts that together shall constitute a single MOA.

10.9 The Reclamation contact person for this MOA is:

Greg Krzys
U.S. Bureau of Reclamation
27708 Jefferson Road, Suite 202
Temecula, CA 92590
(951) 695-5310

IN WITNESS WHEREOF, the Partners have executed this Agreement on the date and the year written above.

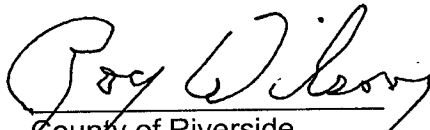
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
LOWER COLORADO REGION



William Steele
Area Manager
Southern California Area Office


5/28/08
Date

IN WITNESS WHEREOF, the Partners have executed this Agreement on the date and the year written above.


County of Riverside
Roy Wilson, Chairman
Board of Supervisors

May 20, 2008
Date

ATTEST:
NANCY ROMERO, Clerk of the Board

By: 
Deputy

IN WITNESS WHEREOF, the Partners have executed this Agreement on the date and the year written above.

CITY OF MURRIETA

John J. Reaney
City Attorney

May 6, 2008
Date

Richard H. Hobb
Mayor

May 6, 2008
Date

Mitzi Ortiz
City Clerk

May 6, 2008
Date

The foregoing instrument is a correct copy of the original on file in this office.

ATTEST: *May 15, 2008*

Mitzi Ortiz
City Clerk, Murrieta, California

By: *Mitzi Ortiz, Assistant*

IN WITNESS WHEREOF, the Partners have executed this Agreement on the date and the year written above.

STATE OF CALIFORNIA
Department of Transportation

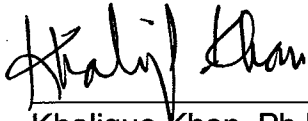

Susanne Glasgow
Deputy District Director – Environmental Division

5 December 2007
Date

Monitoring costs will be funded through the Stormwater Program. These costs are included in the Needs Assessment, Santa Margarita Cost Share Agreement, and Memorandum of Agreement for monitoring.

Costs for this work will be charged to District 43, EA 910204

IN WITNESS WHEREOF, the Partners have executed this Agreement on the date and the year written above.



Khalique Khan, Ph.D., P.E.
Head, Environmental Engineering Division
Assistant Chief of Staff
Environmental Security
Marine Corps Base, Camp Pendleton
By direction of the
Commanding Officer

January 2, 2008
Date


IN WITNESS WHEREOF, the Partners have executed this Agreement on the date and the year written above.

CITY OF TEMECULA



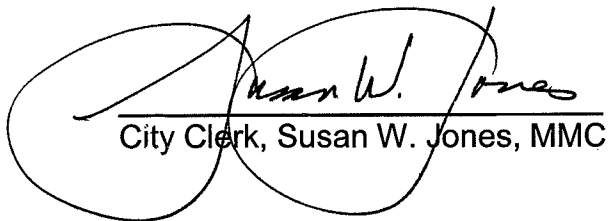
City Attorney, Peter M. Thorson

2-26-08
Date



Mayor, Michael S. Naggar

2-26-08
Date



City Clerk, Susan W. Jones, MMC

2-26-08
Date

MEMORANDUM OF AGREEMENT No. 08-MU-35-0005-SANTA MARGARITA
LAGOON INVESTIGATION FOR IMPLEMENTATION OF THE SAN DIEGO
REGIONAL WATER QUALITY CONTROL BOARD ORDER NO. R9-2006-076

IN WITNESS THEREOF, this AGREEMENT is executed as follows:

For the County of San Diego

Date: 1/11/2008
Signature: Wm L F. McColl

Printed Name: Winston F. McColl

Title: Director of Purchasing and Contracting

Approved as to Form
County Counsel

Date: 12/20/07
Signature: Mary Jo Lanza
Printed Name: Mary Jo Lanza
Title: Senior Deputy County Counsel